

REMARKS

I. General

Claims 1, 2, 4-21, and 24-41 were pending in the present application. The present Final Office Action (mailed April 15, 2009) raises the following issues:

- Claims 13, 19, 32, and 38 are rejected under 35 U.S.C. §112, second paragraph; and
- Claims 1, 2, 4-21, and 24-41 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 7,076,436 to Ross et al. (hereinafter “*Ross*”) in view of U.S. Patent Application Publication No. 2003/0097573 to Wheeler et al. (hereinafter “*Wheeler*”).

Applicant respectfully traverses the outstanding rejections raised in the Final Office Action, and requests reconsideration and withdrawal thereof in light of the remarks presented herein.

II. Rejections Under 35 U.S.C. §112, Second Paragraph

In response to the rejection in the previous Office Action of claims 13, 19, 32, and 38 as being indefinite under 35 U.S.C. §112, second paragraph, Applicant submitted clarifying amendment to these claims in order to clearly specify that the recited numeric range-based variable is a variable “that can accept any numeric value within a range of valid numeric values.” Without conceding that the original language of these claims was not in compliance with 35 U.S.C. §112, second paragraph, Applicant respectfully submits that the clarifying amendment ensures that the language is sufficiently definite as to comply with 35 U.S.C. §112, second paragraph.

The Final Office Action maintains the rejection and asserts: “It is unclear as to what the numeric value is; the claim is written such that the numeric value could be any number of things (i.e. diagnosis/treatment codes, vital signs, patient identification numbers).” Applicant

respectfully submits that the language at issue is sufficiently definite under 35 U.S.C. §112, second paragraph, and the issue raised by the Examiner concerns the breadth of the language (i.e., that the numeric value may be representative of many different things) as opposed to the definiteness of that language. That is, the question of exactly what the numeric values included in the recited numeric range-based variable may represent (such as diagnosis code, vital signs, patient-specific measurements, etc.) goes to breadth of the claim, rather to its definiteness. One of ordinary skill in the art can clearly understand that the claim language requires that the recited numeric range-based variable is a variable “that can accept any numeric value within a range of valid numeric values”, without resolving the question of what the numbers included in the variable specifically represent. Applicant respectfully reminds the Examiner that breadth of a claim is not indefiniteness, *see* M.P.E.P. § 2173.04.

Because the language is sufficiently definite as to comply with 35 U.S.C. §112, second paragraph, Applicant respectfully requests that this rejection be withdrawn.

III. Rejections Under 35 U.S.C. §103

Claims 1, 2, 4-21, and 24-41 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Ross* in view of *Wheeler*. Applicant respectfully traverses these rejections for the reasons discussed hereafter.

The test for non-obvious subject matter is whether the differences between the subject matter and the prior art are such that the claimed subject matter as a whole would have been obvious to a person having ordinary skill in the art to which the subject matter pertains. The United States Supreme Court in *Graham v. John Deere and Co.*, 383 U.S. 1 (1966) set forth the factual inquiries which must be considered in applying the statutory test: (1) determining of the scope and content of the prior art; (2) ascertaining the differences between the prior art and the claims at issue; and (3) resolving the level of ordinary skill in the pertinent art. As discussed further hereafter, Applicant respectfully asserts that the claims include non-obvious differences over the cited art.

As discussed further below, the rejections should be overturned because when considering the scope and content of the applied combination of the *Ross* and *Wheeler* references

there are significant differences between the combination and claims. Thus, considering the lack of any disclosure or suggestion in the applied combination of all limitations of claims 1, 2, 4-21, and 24-41, one of ordinary skill in the art would not find these claims obvious under 35 U.S.C. §103, and therefore the rejections should be withdrawn.

Independent Claim 1

Independent claim 1 recites:

A data entry method comprising:
in a computer-based medical record including a plurality of data fields,
defining one or more data fields for which desired field data is to be acquired; and
automatically populating at least one of the one or more data fields with
desired field data from a data source, said automatically populating comprising:
receiving, by a computer-based application that is stored to a
computer-readable medium and executing on a processor-based computer, a
schedule for contacting said data source to prompt said data source for the desired
field data for said at least one data field;
triggering, by said computer-based application, contacting said
data source in possession of the desired field data in accordance with said
schedule; and
receiving, by said computer-based application, the desired field
data from the data source. (Emphasis added).

The applied combination of *Ross* and *Wheeler* fails to teach or suggest at least the above-emphasized limitations of claim 1. For instance, the applied combination fails to teach or suggest automatically populating a data field of a medical record by receiving, by a computer-based application, a schedule for contacting a data source and triggering, by the computer-based application, contacting of the data source in accordance with the schedule.

For instance, *Ross* appears to permit manual entry of data into medical records, and does not appear to teach or suggest any technique for automatically populating at least one data field of a medical record by contacting a data source in accordance with a received schedule, as recited by claim 1.

Further, *Wheeler* is directed generally to communicating electronically regarding accounts, and addresses various uses of public and private keys, etc. for achieving secured

communication. *Wheeler* does not appear to address any technique for updating medical records whatsoever, and, like *Ross*, does not appear to teach or suggest any technique for automatically populating at least one data field of a medical record by contacting a data source in accordance with a received schedule, as recited by claim 1.

The Final Office Action concedes that *Ross* does not teach or suggest the recited automatically populating of one or more data fields of a medical record as recited by claim 1, *see* page 3 of the Final Office Action. However, the Final Office Action contends (at page 3 thereof) that *Wheeler* discloses this limitation, citing to paragraphs 0130 and 0299 of *Wheeler*. Paragraph 0130 expressly describes with reference to block 414 of its figure 4a that additional information is obtained from a prospective account holder. This cited paragraph of *Wheeler* does not provide any teaching or suggestion of automatically populating any data field(s).

Paragraph 0299 of *Wheeler* mentions the use of cookies for automatically filling in certain fields of a web site display that is used in an ordering process for ordering a product or service from the website. However, *Wheeler* simply makes no mention of and appears to have no applicability whatsoever to medical records. As is well known in the art, medical records are special types of data records due to the particularly personal and sensitive nature of the information they contain and the restrictive access to such information to only certain authorized users, such as a patient's physician. While *Wheeler* proposes using cookies for automatically filling in fields of a web site's ordering form for assisting a purchaser in ordering a product or service, *Wheeler* provides no hint whatsoever of automatically populating data fields of a patient's medical record. Further, it is unclear how, if at all, cookies (which are populated with information based on a user's browsing history) may be employed for populating data fields of a patient's medical record.

Additionally, claim 1 recites that the automatically populating comprises receiving a schedule for contacting the data source to prompt the data source for the desired field data, and triggering contact of the data source in accordance with the schedule. *Wheeler's* use of cookies for automatically populating fields of a web site's order form does not include any such receipt or use of such a schedule for contacting a data source. Cookies are commonly used by websites

for maintaining specific information about users, such as site preferences or the contents of their electronic shopping carts.

At best, even if the system of *Ross* were implemented as a web site, similar to that of *Wheeler*, the use of cookies as suggested by *Wheeler* might aid a user of *Ross*' system for automatically populating certain fields of data as established by the user (e.g., the user preferences, etc.). However, even making this leap and adaptation of *Ross* system to come close to that proposed by *Wheeler*, the use of cookies as suggested by *Wheeler* does not include any receipt or use of a schedule for contacting a data source as expressly recited by claim 1.

Thus, even when giving the best attempt at combining the disparate teachings of *Ross* and *Wheeler*, the resulting combination fails to teach or suggest the limitations recited by claim 1. Accordingly, the applied combination of *Ross* and *Wheeler* fails to teach or suggest all limitations of claim 1, and therefore the rejection of claim 1 should be withdrawn.

Independent Claims 14, 20, and 33

Independent claims 14, 20, and 33 are also believed to be patentable over the applied combination of *Ross* and *Wheeler* for reasons similar to those discussed above with claim 1. Therefore, Applicant respectfully requests that these rejections also be withdrawn.

Dependent Claims

Each of dependent claims 2, 4-13, 15-19, 21, 24-32, and 34-41 depends either directly or indirectly from one of independent claims 1, 14, 20 and 33, and thus each inherits all limitations of the respective independent claim from which it depends. It is respectfully submitted that dependent claims 2, 4-13, 15-19, 21, 24-32, and 34-41 are allowable not only because of their dependency from their respective independent claim for the reasons discussed above, but also in view of their novel claim features (which both narrow the scope of the particular claims and compels a broader interpretation of their respective independent claim).

IV. Conclusion

In view of the above, applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-3948, under Order No. 66729/P034US/10614706 from which the undersigned is authorized to draw.

Dated: June 15, 2009

Respectfully submitted,

By 

Jody C. Bishop

Registration No.: 44,034

FULBRIGHT & JAWORSKI L.L.P.

2200 Ross Avenue, Suite 2800

Dallas, Texas 75201-2784

(214) 855-8007

(214) 855-8200 (Fax)

Attorney for Applicant